IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6792 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BABUBHAI VIRJIBHAI PATEL

Versus

DEPUTY CONSERVATOR OF FOREST

Appearance:

1. Special Civil Application No. 6792 of 2004

MR BP MUNSHI for Petitioner No. 1

MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/05/2005

CAV JUDGEMENT

In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated

17th March, 2004 passed by the learned Sessions Judge, Valsad passed in Criminal Appeal No.14 of 2002 (Old Criminal Appeal No.29 / 1994) in dismissing the same and confirming the order passed by the Deputy Conservator of Forest, Valsad dated 24th June, 1994 in confiscating the tempo bearing registration number GJ-15-T-2585 under Section 61(A) of the Indian Forest Act, 1927 (hereinafter referred to as the "Act" for brevity).

.RS 2.

#. The petitioner was the owner of the tempo bearing registration number GJ-15-T-2585. The said tempo was found in illegal transportation of Khair wood from different villages to the Khair Wood depot based at Sukhesh belonging to one Mohanbhai Nathabhai Patel. At the relevant time, one Ishwarbhai Naginbhai Patel was the driver of the aforesaid tempo and he was regular driver. There were in fact in all nine trips on various dates between 21.12.92 to 3.2.1993. Proceedings under the provisions of the Act was initiated by the respondent No.1 - the Deputy Conservator of Forest, Valsad and as it prima facie appeared that the said tempo was involved in the commission of the forest offence punishable under Section 41 (2)(b) of the Act, a show cause notice was issued to the owner and the petitioner as well as one Shivjibhai Virjibhai Patel were called upon to show cause as to why the said tempo should not be confiscated. It appears that the owner filed the written statement dated 13.12.1993 and 16.4.1994 to the show cause notice and after an opportunity of hearing and considering the written statement and the evidence on record, the respondent No.1 held that the offence has been committed in respect of illegal transporting the Khair material from different villages to village Sukhesh and that offence has been committed in respect of each trip separately and therefore, for each offence the tempo is liable to be confiscated and as the said tempo has been used for repeated offence, the respondent No.1 - Deputy Conservator of Forest, Valsad (North) by order dated 23.6.1994 passed the order confiscating the tempo in question in exercise of the powers under Section 61(A) of the Act.

#. Being aggrieved and dissatisfied with the order passed by the respondent No.1 - Deputy Conservator of Forest, Valsad (North) dated 23rd June, 1994, the petitioner preferred Criminal Appeal No.14 / 2002 (old No.29/1994) before the learned Sessions Judge, Valsad and the learned Sessions Judge, Valsad who by judgment and order dated 17.3.2004 dismissed the said appeal confirming the order passed by the Deputy Conservator of

Forest, Valsad dated 24.3.1994. Being aggrieved and dissatisfied with the same, the petitioner preferred the present special civil application. Though it is contended that the present special civil application is filed under Articles 226 and 227 of the Constitution of India, but in fact, in the present special civil application what is challenged is the judgment and order passed by the learned Sessions Judge, Valsad passed in Criminal Appeal No.14 of 2002, the same is treated under Article 227 of the Constitution of India.

#. Shri B.P.Munshi, the learned advocate appearing on behalf of the petitioner has vehemently submitted that the order passed by the respondent No.1 - Deputy Conservator of Forest confiscating the tempo in question is against the principle of natural justice and is based on no evidence. It is also further submitted that everything has been decided on hearsay evidence and there is no evidence whatsoever by which it can be said that offence under provisions of the Indian Forest Act has been committed. It is also further submitted that it was not the responsibility of the petitioner owner to produce the driver Shri Ishwarbhai Naginbhai Patel. It is also further submitted that the fact of illegal transportation of Khair wood material shown in the notices is cooked one and not correct. It is also further submitted that the driver i.e. Ishwarbhai Naginbhai Patel who was at the relevant time was driving the tempo in question for all nine trips, was not the regular driver, so the allegations made against the owner, are wrong. It is also further submitted that the documents required by the owners for their defence were not supplied till the date of notice dated 14.9.1993, more particularly, note book which was seized at the time of inquiry. It is further submitted that the petitioner was not given an opportunity to examine the witnesses and the complainant. It is required to be noted that Shri Munshi, the learned advocate appearing on behalf of the petitioner has mainly argued with regard to the impugned order passed against the principle of natural justice, more particularly, by contending interalia that the note book which was seized at the relevant time of inquiry, was not given to the petitioner and therefore, the impugned order is passed against the principle of natural justice.

#. Shri Munshi, the learned advocate for the petitioner has relied upon the judgment of the Hon'ble Supreme Court of India in case of STATE OF W.B. AND OTHERS V. SUJIT KUMAR RANA reported in (2004) 4 SCC 129 in support of his submission that before passing the order of confiscation, firstly, it has to be established that forest offence has

been committed.

#. On the other hand, Shri Dipen Desai, the learned AGP appearing on behalf of the respondents while supporting the judgment and order passed by both the authorities below, has submitted that both the authorities have concurrently found against the petitioner with regard to committing of offence under the provisions of Indian Forest Act. It is also further submitted that transportation of Khair Wood material itself is an offence. It is also further submitted that it is not the case of the petitioner that the vehicle is not used at all. He has also further submitted that considering the provisions of Section-61-A read with Section 61-B of the Act in a case where there is reason to believe that a forest offence has been committed, the vehicle can be confiscated. Relying upon the judgment of the learned Single Judge of this Court rendered in Criminal Revision Application No.635 of 2004, Shri Dipen Desai, the learned AGP has submitted that the owner of the vehicle has to prove to the satisfaction of the Forest Officer that vehicle used in carrying forest produce was used without knowledge or connivance of the owner himself and it is the owner who has to prove that he has taken all reasonable and necessary precautions against such use of vehicle. It is also further submitted that relying upon the statements of the driver Shri Ishwarbhai Naginbhai Patel, statement of Shivajibhai Virjibhai Patel (brother of the petitioner) co-owner of the tempo, statement of Mohanbhai Nathubhai Patel purchaser and all the farmers who sold to the illegal Khair Wood to the purchaser and considering the evidence on record, both the authorities below concurrently found that tempo in question was used for illegal transportation of Khair material and offence has been committed in respect of forest produce and therefore, it is requested to dismiss the present special civil application.

#. Heard the learned advocates appearing on behalf of the parties.

#. It is required to be noted that at the out set that this is a petition under Article 227 of the Constitution of India. As held by the both the authorities below inspite of the repeated hearing fixed for the said tempo, the petitioner owner of the tempo in question, Babubhai Virjibhai Patel one way or the other avoided the same and hearings for the proceedings were adjourned time and again (more than ten times) during which the petitioner neither gave his statement, nor produced any evidence before the respondent No.1. It is also held by the

appellate court i.e. the learned Addl. Sessions Judge, Valsad that the petitioner was given all the documentary evidence inclusive of the statements of the witnesses, copies of Panchnama etc. vide communication dated 5.11.1993. The petitioner has failed to show any prejudice caused to him by not giving him copy of the note book which was seized at the time of inquiry. It is required to be noted that there were in all nine trips between 21.12.92 to 3.2.1993 for which the tempo in question was used. At the relevant time the statement of the driver Ishwarbhai Naginbhai Patel was recorded. He has admitted transporting of Khairwood without pass or permit. State of one Shri Shivajibhai Virjibhai Patel who is brother of the petitioner, was also recorded, wherein he has also admitted the guilt and has submitted that said Shivajibhai and the petitioner are residing in a joint family doing the joint business of transportation and a sawmill called as "Patel Saw Mill", Paradi. He has also admitted that the tempo in question has been purchased in the name of the petitioner but he is looking after all the business of the said tempo. He has further confessed that his driver Ishwarbhai Naginbhai Patel was instructed by himself to transport illegal Khair material as and when one Mohanbhai Nathubhai Patel calls him. The aforesaid nine trips were undertaken by his driver and transported illegal Khair material in the aforesaid tempo at the instance of the said Mohanbhai Nathubhai Patel and for each trip, freight was paid at the rate of Rs.500/- per trip. Statements of other villagers are also recorded and the copies of all the statements are also given to the petitioner. On appreciation of evidence, both the authorities below i.e. Deputy Conservator of Forest as well as the learned Addl. Sessions Judge, Valsad have come to the conclusion that forest offence has been committed by illegally transporting the Khair material and transporting of the Khair material itself is forest offence. Considering the aforesaid statements and the documentary evidence, if order of confiscation has been passed, it cannot be said that there is illegality committed by both the authorities below. In fact, it has been found that by aforesaid tempo, 46,416 kgs of illegal Khair wood material worth Rs.2.5 Lakh has been transported. Considering the evidence on record, it cannot be said that the impugned orders are in violation of principle of natural justice.

#. As held by the learned Single Judge of this Court in the case of GULSHAN KUMAR ARORA V. DEPUTY CONSERVATOR OF FOREST rendered in Criminal Revision Application No.635 of 2004 unless it is proved that the vehicle in question was used in carrying forest produce without knowledge or

connivance of the owner himself and that person has taken all reasonable and necessary precautions so that the vehicle in question is not being used in committing the forest offence, the authorised officer can pass the order of confiscating the vehicle for which he has reason to believe that forest offence has been committed in respect of the forest produce with the help of the vehicle in question and that such a burden is upon the owner. Considering the aforesaid judgment and the considering the provisions of Section 52 read with Section 61-A and Section=61-B of the Act and considering the evidence on record, more particularly, statements of the driver as well as the brother of the petitioner who was in charge of the tempo in question and who was running business of transport, the order confiscating the tempo in question which is neither illegal and / or without any jurisdiction and / or contrary to the evidence on record and as such, there seem no illegality committed by any of the authority below in passing the order of confiscation of vehicle in question. On the contrary, both the authorities below are justified in passing the order of confiscation of tempo in question. Under the circumstances, the present special civil application under Article 227 of the Constitution of India requires to be dismissed and is accordingly dismissed.

Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated forthwith.

: Further Order :

At this stage, Shri B.P.Munshi, the learned advocate appearing on behalf of the petitioner has requested to extend the ad-interim relief granted by this Court upto 15th June, 2005. In the facts and circumstances of the case, the ad-interim relief is extended upto 15th June, 2005.

Direct Service is permitted.

Date : 13.5.2005 [M.R.Shah, J.]

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